

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

MAGGE RODRIGUEZ, On Behalf of
Herself and All Others Similarly Situated,

Plaintiffs,

v.

WESTERN-SHAMROCK CORPORATION,

Defendant.

CAUSE NO. _____

JURY TRIAL DEMANDED

COLLECTIVE ACTION

ORIGINAL COMPLAINT

SUMMARY

1. Western-Shamrock Corporation (Western-Shamrock) and does not pay its store managers overtime wages as required by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the FLSA). Rather, Western-Shamrock pays its store managers a flat weekly rate for the first forty (40) hours of work in a workweek and nothing at all for hours worked in excess of forty (40) in a workweek. Maggie Rodriguez (Rodriguez), a former store manager for Western-Shamrock, brings this collective action seeking to recover the unpaid and/or underpaid overtime wages and other damages owed to her and Western-Shamrock's other similarly-situated store managers.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question arising under the FLSA.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Rodriguez's claims occurred in this judicial district and division.

THE PARTIES

4. Rodriguez is a former employee of Western-Shamrock. Her consent to participate in this collective action is attached hereto as Exhibit 1.

5. Western-Shamrock Corporation is a Texas corporation with its principal place of business in San Angelo, Tom Green County, Texas. Western-Shamrock may be served with process by serving its registered agent, Scott Wisniewski, at 801 S. Abe, Suite 2A, McAllen, Texas 76903 or at any other place where Scott Wisniewski may be found.

THE FACTS

6. Western-Shamrock is in the consumer finance and installment loan lending business.

7. Western-Shamrock conducts business in eight (8) states in the United States and Mexico at nearly three-hundred (300) branches.

8. In each of the past three (3) years, Western-Shamrock's gross annual revenues have well exceeded \$500,000.00.

9. Western-Shamrock employed Rodriguez for approximately nineteen (19) years until approximately April of 2017.

10. At all times material to this lawsuit Western-Shamrock employed Rodriguez with the nominal title of "manager" in its McAllen, Hidalgo County, Texas office.

11. At all times material to this lawsuit Rodriguez typically spent substantially all of her working hours taking loan applications, processing loan applications, taking customer payments, answering phones, collecting on overdue accounts, general customer service and other duties as assigned by her District Manager.

12. In performing her aforementioned duties, Rodriguez handled goods or materials that had been moved in or produced for commerce such as office supplies, telephones, office equipment and other goods and materials.

13. Therefore, Rodriguez was an employee engaged in commerce and/or in the production of goods for commerce and/or who handled goods or materials that have been moved in or produced for commerce within the meaning of the FLSA.

14. At all relevant times, Western-Shamrock had at least two (2) employees, including other managers like Rodriguez, who were engaged in commerce and/or in the production of goods for commerce and/or who handled goods or materials that have been moved in or produced for commerce within the meaning of the FLSA.

15. Rodriguez routinely worked in excess of forty (40) hours in a workweek for Western-Shamrock.

16. Western-Shamrock was well aware of the fact that Rodriguez routinely worked in excess of forty (40) hours in a workweek.

17. Western-Shamrock paid Rodriguez a flat weekly rate for the first forty (40) hours of work in a workweek and nothing at all for hours worked in excess of forty (40) in a workweek including no overtime premium.

COLLECTIVE ACTION ALLEGATIONS

18. Rodriguez re-alleges paragraphs 1-17 as if set out here in their entirety.

19. Rodriguez's immediate supervisor was her District Manager.

20. The District Manager's district covered Western-Shamrock's stores in McAllen, Mercedes, Brownsville, San Benito, Raymondville, Harlingen and Mission, Texas (the District).

21. In addition to Rodriguez, Western-Shamrock has employed many other managers in the District over the last three (3) years.
22. These managers performed the same or similar job duties for Western-Shamrock as Rodriguez performed.
23. Like Rodriguez, these other managers in the District spent substantially all of their working hours taking loan applications, processing loan applications, taking customer payments, answering phones, collecting on overdue accounts, general customer service and other duties as assigned by her District Manager.
24. Like Rodriguez, these other managers in the District handled goods or materials that had been moved in or produced for commerce such as office supplies, telephones, office equipment and other goods and materials.
25. Like Rodriguez, these other managers in the District were employees engaged in commerce and/or in the production of goods for commerce and/or who handled goods or materials that have been moved in or produced for commerce within the meaning of the FLSA.
26. Western-Shamrock paid these other managers in the same manner for the hours they worked including paying them a flat weekly rate for the first forty (40) hours of work in a workweek and nothing at all for hours worked in excess of forty (40) in a workweek including no overtime premium.
27. Western-Shamrock's other managers should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b). Therefore, the class is properly defined as:

All managers employed by Western-Shamrock at any of its stores in McAllen, Mercedes, Brownsville, San Benito, Raymondville, Harlingen or Mission, Texas within the 3 years preceding the filing date of this complaint through the time of trial

CAUSE OF ACTION

28. Rodriguez re-alleges paragraphs 1-27 as if set out here in their entirety.
29. The FLSA requires employers to pay their employees one-and-one-half times their regular rates for hours those employees work in excess of forty (40) in a workweek.
30. Western-Shamrock employed Rodriguez and its other managers within the meaning of the FLSA.
31. Western-Shamrock is an employer within the meaning of the FLSA.
32. Rodriguez and Western-Shamrock's other managers are or were employees engaged in commerce and/or in the production of goods for commerce and/or handled goods or materials that have been moved in or produced for commerce within the meaning of the FLSA.
33. Western-Shamrock is an enterprise engaged in commerce within the meaning of the FLSA.
34. By failing to by Rodriguez and its other managers overtime compensation at one-and-one-half times their regular rates, Western-Shamrock violated the FLSA's overtime provisions.
35. Western-Shamrock owes Rodriguez and its other CSRs the difference between the rates actually paid and the proper overtime rates as unpaid and/or underpaid overtime wages.
36. Because Western-Shamrock knew its pay practices violated the FLSA, or showed reckless for whether its pay practices violated the FLSA, Western-Shamrock owes these wages beyond the default two (2) year period immediately preceding the filing of this lawsuit.
37. Western-Shamrock is, further, liable to Rodriguez and its other managers for liquidated damages in an additional amount equal to all unpaid and/or underpaid overtime wages.
38. Rodriguez and Western-Shamrock's other managers are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

JURY DEMAND

39. Rodriguez demands a trial by jury.

PRAYER

Rodriguez asks that Western-Shamrock be cited to appear and answer, and that the Court:

1. Enter an order allowing this action to proceed as a collective action under the FLSA;
2. Upon final hearing, award Rodriguez and Western-Shamrock's other managers judgment against Western-Shamrock for all unpaid and/or underpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;
3. Upon final hearing, award Rodriguez and Western-Shamrock's other managers judgment against Western-Shamrock for post-judgment interest on all amounts awarded at the highest rate allowable by law; and
4. Award Rodriguez and Western-Shamrock's other managers all such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

/S/ Michael K. Burke

By: _____

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